IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2013 OF 2005

Suresh Shankar Hasbe & Anr. ... Petitioners.

Vs.

The Principal, Sonopant Dandekar College, Palghar & Ors. ...Respondents.

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Mr. R. S. Apte with Mr. Mandar Limaye for the Petitioners.
Mr. C. R. Sonawane, AGP for Respondent No.3 to 6.

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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

June 14, 2005.

P.C.:

The First Petitioner was appointed with effect from 1st February 1999 for the Academic Year 1998-99 by the First Respondent as a teacher and it has been averred in the petition that he was in service until 26th September 2003 when his services were terminated. According to the Petitioners, the First Petitioner was granted approval for his post on 3rd September 2000 by the Fourth Respondent who is the Deputy Director of Education, Nasik Division, Nasik. Similarly, it has been stated that the Second

Petitioner worked on a part time basis between 1991 and 1999 after which on 19th August 1999, she was appointed as a full time teacher by the First Respondent. It has been averred that the Second Petitioner was continued in service till September 2003. Similarly, it has been averred that on 3rd September 2000, the Fourth Respondent had granted his approval to her post in the First Respondent Institution. The grievance of the Petitioners is that though the letters of the Fourth Respondent dated 3rd September 2000 granted permanent approval to their posts, on 24th April 2003, the Fourth Respondent issued a communication stating that the decision regarding approval to the posts held by the Petitioners will be taken by the Director of Education, Pune. This, according to the Petitioners, was on the ground that the management had not taken cognizance of the backlog in appointments to reserved posts and until a decision was taken, the approval given to the Petitioners would stand suspended. On 13th August 2003, the Deputy Director of Education purported to cancel the approval which was inter alia granted to the Petitioners. Thereupon, the management issued letters of termination on 26th September 2003. The Petitioners then

moved a Writ Petition under Article 226 of the Constitution before this Court (Writ Petition 7869 of 2003). By an order dated 18th November 2003, the communication dated 13th August 2003 and the order of termination dated 26th September2003 were quashed and set aside and the management was directed to reinstate the Petitioners in service with back wages. This Court noted that the orders impugned were passed in violation of the principles of natural justice. The original order passed by the Fourth Respondent in favour of the Petitioners was restored and it was made clear that in the event that the Fourth Respondent sought to cancel the appointments of the Petitioners, he shall not do so without issuing a notice to show cause and without affording an opportunity of being heard.

2. On 5th May 2004, the Petitioners were called for a hearing before the Deputy Director of Education. The Petitioners were thereafter heard by the Deputy Director. On 23rd June 2004, the Deputy Director of Education issued a notice to the Petitioners to show cause as to why their approval should not be cancelled to

which the Petitioners submitted a reply. The Petitioners thereupon received letters from the Deputy Director of 18th February 2005 purporting to cancel the approval granted to them.

3. Rule 9(7) of the Rules framed under the the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, contemplates a reservation of 34% of posts in the teaching and non-teaching staff for the backward classes. The case of the Petitioners as set out in para 18 of the petition is that 13 posts are available for candidates belonging to the backward classes and while there is a backlog of 2 posts of the Scheduled Tribes, 8 additional candidates belonging to the backward classes have been appointed and that the total reservation has in the circumstances, exceeded 34% which was the statutory limit. The Petitioners have relied upon the principle of interchangeability.

4. The Deputy Director of Education has in his order dated 18th February 2005 purported to rely upon a Government Resolution dated 18th October 1997 in repelling the contention of

the Petitioners. Rule 9(7) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, prescribes a total reservation of 34%. A Division Bench of this Court held in **Madhavi Mahendra Joshi vs. The Principal, K.G. Joshi College of Arts,** Writ Petition 3597 of 2004 decided on 25th February 2005, that the statutory reservation which is provided for in Rule 9(7) cannot be modified by a Resolution issued by Government in the exercise of its administrative powers. The percentage of reservations that has been provided under the rules framed under the Act cannot be altered by an administrative direction. We are in agreement with the principle enunciated by the Division Bench. These rules cannot be modified by an administrative fiat. There is, therefore, merit in the contention of the Petitioners that the foundation of the impugned order dated 18th February 2005 passed by the Deputy Director of Education is erroneous. The Petitioners have prayed for reliefs similar to those which were granted by the Division Bench of this Court in the order passed on 25th February 2005 in Writ Petition 3597 of 2004.

5. In the circumstances, the impugned order of the Fourth Respondent dated 18th February 2005 is quashed and set aside. The matter is remanded back to the Fourth Respondent for reconsideration in the light of the observations contained in the body of this judgment. The Fourth Respondent shall pass orders afresh after hearing the Petitioners, the management and the Department. In the event that an order adverse to the Petitioners is passed, that shall not be acted upon for a further period of eight weeks of its communication. In the meantime, the Petitioners will continue to be governed by the directions which were issued by this Court on 18th November 2003 in Writ Petition 7869 of 2003. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

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